one of the primary purposes of the Consolidation is defeated by perpetuating reference to the original statutes. But should the Little Bill as submitted be accepted by Congress, the enactment of an analogous interpretative statute seems the only way to avoid much confusion.[17]

Further, it seems unfortunate that a Consolidation which is to be serviceable should not include such fundamentally revolutionary measures as the Transportation Act, 1920, and the Merchant Marine Act, 1920, changing as they do the provisions of the Interstate Commerce Act and other laws perpetuated in the Consolidation.

The recent session of Congress adjourned without the Little Bill's having passed the Senate. But the effort expended in the compilation of the Little Bill need not be totally lost, and the experience gained will be of great service in the preparation of a much needed but more accurate Consolidation. And it is to be hoped that members of the profession and others interested in the clarifying of the Federal Statute books will make use of this opportunity to secure a satisfactory revision.

THE GRAND JURY.—The Constitutional Convention now sitting in Illinois is examining the merits of the grand jury and is considering the advisability of following the lead of the group of American States which, in its desire to simplify criminal procedure, has provided for prosecution on information concurrently with indictment.[1]

Historically, the grand[2] jury is of great interest. Its beginnings are shrouded in obscurity.[3] The establishment of an accusing body (*le Graunde Inquest*) made up of "gentlemen of the best figure in the county",[4] distinct from the trial jury, however, dates only from the reign of Edward III.[5] It was the duty of the grand jury at that time to render an account to the itinerant judges, of crimes committed in the county; and they indicted on common fame. Their proceedings were guarded with secrecy lest the suspected person escape justice[6] and it followed that their investigations were entirely *ex parte*. It was largely because of the obligation of secrecy, however, that the grand jury was able to assert its independence of the crown and to play the role of protector of innocence

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Law of 1909 specifically puts trusts to satisfy annuities under § 96 (2), corresponding to Rev. Stat. § 55 (2), the courts continue to hold the interest inalienable. See *Matter of United States Trust Co.* (N. Y. 1914) 12 Mills 367, 371, 148 N. Y. Supp. 762.

[17] There is a conflict of authority as to the constitutionality of such interpretative legislation. It has been held an encroachment on the judiciary in that it is the function of the court, not of the legislature, to interpret the statutes as they exist. *Commonwealth* v. *Warwick* (1895) 172 Pa. St. 140, 33 Atl. 373; see *Chicago R. I. & P. Ry.* v. *Willis* (1919) 75 Okla. 13, 14, 181 Pac. 307; *cf. McCartney* v. *Shipherd* (1911) 60 Or. 133, 143, 117 Pac. 814. The better view, however, is that a legislative body may interpret to the extent to which it has power to amend. *Stockdale* v. *Insurance Co.* (1873) 104 U. S. 323; *In re Coburn* (1913) 165 Cal. 202, 131 Pac. 352; see *People* v. *Board of Supervisors* (1857) 16 N. Y. 424, 432.

[1] Constitutional Convention Bulletin, No. 10, (Ill. 1920) p. 828.

[2] For an explanation of its characterization as "grand" jury, see Zachary Babington, *Advice to Grand Jurors* (1676) p. 4.

[3] There has been much speculation as to its exact origin. Wm. Forsyth, *History of Trial by Jury* (1852) 215.

[4] 4 Bl. *Comm.* 302.

[5] See (1368) Stat. 42 Edw. III, c. 3. John Kinghorn, *The Growth of the Grand Jury System* (1881) 6 Law Mag. & Rev. 368. The Grand Jury is indigenous to British soil and with the exception of the brief period (from 1791-1808) during which it was used in France, it has remained peculiar to Anglo-Saxon countries. See F. Gineste, *Histoire et organisation du jury criminel* (1896) 56.

[6] *The Security of Englishmen's Lives* (1681) attributed to Sir John Somers, reprinted in *Tracts on Juries* (1798) 50.

against oppression that was reserved to it under the Stuarts.[7] Once regarded as a great bulwark of protection between individuals and the crown,[8] the grand jury is today pronounced by many to be a picturesque but useless heritage with which we can profitably dispense.[9] Others equally positively claim it to be of continuing utility.[10]

Since early times the obligation of grand jurors, as shown by their oath, has been diligently to inquire, and true presentment make of all such things and matters, as shall be given them in charge, or shall come to their knowledge touching the present service.[11] As a result of historical development, the grand jury has used the power so given it to two rather different ends. As an inquisitorial body, it may be of great value, especially in large cities, in examining into and exposing widespread evil conditions[12] or conspiracies of powerful interests to defeat justice. But as an accusing body in the routine of criminal administration it is denied that today it serves any useful purpose.[13]

Generally, it is true that the action of the grand jury as an accusing body is a stereotyped review of the judgment of the magistrate.[14] It is also true that grand jurors are accountable to no one for their decisions.[15] Because of this personal irresponsibility, improper motives may influence individual grand jurors in their action. Yet as unanimity is never required,[16] the danger of harm resulting therefrom is not great. Again, writers[17] have protested that the secrecy surrounding the proceedings of the grand jury permits false accusations to be made by witnesses actuated by malice, and innocent persons suddenly to be fastened with the stigma of an indictment on a charge which they, if heard, could easily explain away.[18] It should be borne in mind, however, that the indictment must

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[7] G. J. Edwards Jr., *The Grand Jury* (1906) 28. An interesting example is found in the *Trial of the Earl of Shaftesbury* (1681) 8 How. St. Tr. 759.

[8] Sir John Somers in *Tracts on Juries, supra,* footnote 6, at pp. 32, 33.

[9] E. E. Meek, *Grand Juries* (1888) 85 The Law Times 395.

[10] *The Abolition of Grand Juries* (1905) 7-8 Law Notes 445.

[11] Zachary Babington, *Advice to Grand Jurors* (1676) Preface. *Charge to Grand Jury* (C. C. 1872) 30 Fed. Cas. 992. In addition to the duty of serving as an impartial lay body to whom all accusations of felony must be referred, and found, before the suspected person may be tried, this oath has generally been held to give the jury power to proceed on its own motion. *Hale* v. *Henkel* (1906) 201 U. S. 43, 26 Sup. Ct. 370. But see *Matter of Gardiner* (1900) 31 Misc. 364, 372, 64 N. Y. Supp. 760. N. Y. Code Crim. Proc. § 252.

[12] For an interesting account of the experiences of a grand juror in New York City, see an article by George H. Putnam, (Mch. 1914) 54 American Annals of Political and Social Science 37. N. Y. Code Crim. Proc. § 260.

[13] *Grand Jury Reform* (1920) 4 Jour. Amer. Judic. Soc. 77.

[14] H. W. Chaplin, *Reform in Criminal Procedure* (1893) 7 Harvard Law Rev. 189, 191. But this seems to be not so much the fault of the institution, as it is the result of neglect of grand jurors to do their full duty.

[15] G. J. Edwards, *The Grand Jury* (1906) 166. A certain control exists, however, over their acts. On the one hand, an indictment wholly unsupported by legal evidence may on motion be quashed, (1913) 13 COLUMBIA LAW REV. 168, and on the other hand, the district attorney may later move the court to direct a resubmission of a bill not found, to another grand jury. Black, *A Real Criminal Case* (1919) 144; *cf.* N. Y. Code Crim. Proc. § 270.

[16] There has been a tendency to reduce the number of grand jurors, and in some states, seven only are required, of whom five must concur in finding a verdict. Utah, Const. Art. I, § 13; Mont. Const. Art. III, § 8; Ore. Const. Art. VII, § 18.

[17] Jeremy Bentham, *Rationale of Judicial Evidence,* Book II, c. 10; 6 *Works* (Bowring ed. 1843) 375. George Lawyer, *Should the Grand Jury System Be Abolished* (1906) 15 Yale Law Journal 178. Frederick A. Brown (1920) Proceedings, Ill. State Bar Assn. 288.

[18] In some states, before the bill is presented to the grand jury, it is customary for the magistrate to conduct a thorough investigation during which the suspected

be signed by the witnesses who have testified before the grand jury. Moreover if the witness testifies differently at the trial than he did before the grand jury, a grand juror may reveal that fact.[19] Secrecy is, in addition, a guarantee of protection to witnesses from powerful interests against whom they might otherwise be unwilling to appear.[20] Lastly, there are the undeniable administrative objections arising from the cumbrousness of the grand jury: the delay, expense and inconvenience to witnesses.

Various provisions exist in the constitutions and statutes of the several states regarding grand juries. Indictment for certain classes of crimes is required in the majority of states, some going so far as to require it for some or all misdemeanors as well as felonies.[21] In a number of states,[22] it is provided that the legislature may "change, regulate, or abolish" the grand jury. In some,[23] the constitution provides that all cases may be prosecuted by information as well as by indictment; and in most of these states, it is further provided that an examination and commitment by a magistrate is a preliminary requirement to the filing of an information. Usually the judge is empowered in his discretion to call a grand jury.[24]

Where procedure by information is used, general satisfaction with the change is expressed, and grand juries, although concurrently provided for by law, are seldom called.[25] Prosecution on information temporarily authorized in England,[26] as a war measure, has likewise elicited approval.[27] The proceeding by information[28] upon affidavit of the district attorney after a preliminary investigation by a magistrate before whom both sides are heard, undoubtedly furnishes a more expeditious, elastic and less expensive method of procedure. Moreover, substitution of new informations, or the amendment of defective ones, is much simpler.

These considerations, while important, should not work a change if any substantial safeguard to the state or to innocent suspected persons is thereby im-

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person not only is apprised of the proceedings, but is himself heard. See Black, *A Real Criminal Case* (1919) 1, 36, 73.

[19] *Kirk* v. *Garrett* (1896) 84 Md. 383, 411; 35 Atl. 1089; *Gordon* v. *Commonwealth* (1879) 92 Pa. St. 216; but see 1 Greenleaf, *Evidence* (16 ed. 1899) § 252.

[20] *Grand Jury Reform* (1920) 4 Journ. of the Amer. Judic. Soc. 77, 78.

[21] Ark. Const., Art. II, § 8; Neb. Const., Art. I, § 10; N. J. Const., Art. I, § 9; S. C. Const., Art. I, § 17; W. Va. Const., Art. 3, § 4.

[22] Colo. Const., Art. II, § 23; Neb. Const., Art. I, § 10; N. D. Const., Art. I, § 8; S. D. Const., Art. VI, § 10. *Cf.* Ala. Const., Art. I, § 10; Ark. Const., Art. II, §8; Ill. Const., Art. II, § 8; Iowa, Const., Art. I, § 11, amended in 1884; Miss. Const., Art. III, § 27; Wyo. Const., Art. I, § 13.

[23] Ariz. Const., Art. II, § 30; Cal. Const., Art. I, § 8; Idaho, Const., Art. I, §8; Mo. Const., Art. II, § 12; Mont. Const., Art. III, § 8; Nev. Const., Art. I, §8; Okla. Const., Art. II, § 18; Utah, Const., Art. I, § 13; Wash. Const. Art. I, § 25.

[24] In California, the Constitution (Art. I, §8) requires that a grand jury shall be drawn and summoned once a year in each county. In Oklahoma, it is provided that the grand jury shall be convened by order of a judge having power to try felonies, either on his own motion, or upon the filing of a petition therefor, signed by one hundred tax payers of the county. Const., Art. II, § 18.

[25] Constitutional Convention Bulletin, No. 10 (Ill. 1920) 828, 835.

[26] Grand Juries (Suspension) Act, (1917) St. 7-8 Geo. V, c. 4. The Vexatious Indictments Act (1859) St. 22-23 Vic., c. 17 had curtailed the power of grand jurors to indict on their own initiative for certain misdemeanors. Even among the proponents of grand juries, it was felt that this power should be even further restricted. *Grand Juries* (1879) 67 The Law Times 381.

[27] W. V. Ball, *Notes from the English Inns of Court* (1917) 53 Can. L. J. 222, (1918) 54 Can. L. J. 427.

[28] Conviction for a capital offense without an indictment is not a violation of the due process of law clause in the XIV Amendment to the Federal Constitution. *Hurtado* v. *California* (1884) 110 U. S. 516, 4 Sup. Ct. 292; but see Shaw, C. J., in *Jones* v. *Robbins* (Mass. 1857) 8 Gray 329, 342.

paired. In France, where the preliminary investigation takes place before a magistrate, in all cases of *crimes*,[29] before a trial may be had, the *dossier* must be referred to and found to contain a *charge suffisante* by three judges of a superior court. This submission to three judges is there considered to be a substantial guarantee to the individual. Under our system, the integrity and good judgment of the district attorney and the examining magistrate alone stand between the individual and the trial. Is that sufficient?[30] The reply will depend largely upon the system of choosing magistrates and district attorneys and upon local conditions in each state. In densely populated communities where prosecuting officials are political officers, the answer may well be no.

The necessities of Cook County aptly illustrate the difficulties with which the Illinois Constitutional Covention is confronted in attempting to fix the relative domains of the grand jury and of proceedings by information. It is there felt that the grand jury as an inquisitorial body is indispensable.[31] It is in Chicago that the delay involved in submitting ordinary criminal cases to the grand jury is felt the most keenly; but it is there too, as in most large cities, that the greatest danger of corrupt prosecutors and magistrates exists. If the grand jury as a regular part of criminal procedure is to be retained, the revisors will be faced with the problem of determining the point at which the gravity of the charge overbalances the relative convenience of the information system.[32] Based on the experiences of other states, their decision will be interesting as reflective of the role the grand jury is to play in the future. It will probably be found much easier, however, to allow the grand jury to fall into disuse, or to abolish it altogether than to re-instate it[33] and to re-accustom people to its use. Thus, it may be said that this venerable institution is itself on trial.

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[29] *Crimes* are acts punishable by death, life imprisonment at hard labor, or solitary confinement. For *délits,* submission to the *chambre de mises en accusation* is not necessary.

[30] See *The Abolition of Grand Juries* (1905) 7-8 Law Notes 445, 446.

[31] (1920) 4 Jour. Amer. Judic. Soc. 82.

[32] Alfred C. Coxe, *The Trials of Jury Trials* (1901) 1 COLUMBIA LAW REV. 286, 292.

[33] Oregon appears to be the only state which, after allowing procedure by information, has reverted to a system which requires indictments by grand juries. It is provided, however, that the District Attorney may amend indictments, thus overcoming the objection of inelasticity. Const., Art. VII, § 18, amended in 1910.